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In the Supreme Court of the United States

OCTOBER TERM, 1984

PAMELA D. JONES AND
JENNIFER L. DODGE, ETC., PETITIONERS

v.

MICHAEL PETIT, COMMISSIONER,
MAINE DEPARTMENT OF HUMAN SERVICES

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether petitioners were entitled to receive four additional months of Medicaid coverage pursuant to 42 U.S.C. 1396a(e)(1) after their Aid to Families with Dependent Children benefits were terminated as a result of statutory changes in the AFDC eligibility criteria under the Omnibus Budget Reconciliation Act of 1981.

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This brief is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

1. Petitioners are former recipients of Aid To Families With Dependent Children (AFDC) benefits. AFDC is a joint federal/state program that was created in 1935 to provide assistance to needy families with dependent children. Social Security Act, ch. 531, Tit. IV, 49 Stat. 627-629. Under the AFDC program, the federal government reimburses states for a percentage of their expenditures for aid to such families, 42 U.S.C. 603, 1318; in return, the states agree to administer their programs in accordance with state plans that meet federal statutory and regulatory requirements, 42 U.S.C. 602. States that participate in the

Medicaid program must make Medicaid benefits available to AFDC recipients. See 42 U.S.C. 1396a(a)(10)(A)(i).

Until 1981, eligibility for AFDC benefits was determined by subtracting various deductions and "disregards" from the family's income and comparing the amount remaining with a state standard of need. See *Shea* v. *Vialpando,* 416 U.S. 251 (1974); *Rosado* v. *Wyman,* 397 U.S. 397 (1970). Section 402(a)(7) of the Social Security Act, 42 U.S.C. (1976 ed.) 602(a)(7), required that states take account of expenses reasonably attributable to the earning of income in calculating monthly income levels for purposes of AFDC benefit determinations. Section 402(a)(8) of the Act, 42 U.S.C. (1976 ed.) 602(a)(8), required that states disregard the first $30 of a family's earned income, plus one third of the remainder. Section 402(a)(8) also required disregard of the earned income of full-time students and permitted income to be set aside for the future needs of a dependent child. These "disregards" were intended to serve as work incentives. See, *e.g.,* S. Rep. 1589, 87th Cong., 2d Sess. 17-18 (1962); H.R. Rep. 544, 90th Cong., 1st Sess. 106 (1967).

Congress made significant changes in the method of determining AFDC entitlement when it enacted the Omnibus Budget Reconciliation Act of 1981 (OBRA), Pub. L. No. 97-35, 95 Stat. 357 *et seq.* Under the new statute, a family was not eligible to receive AFDC benefits if its gross income exceeded 150% of a state's standard of need. See 42 U.S.C. 602(a)(18). Congress also altered or eliminated several of the work incentive disregards, because, in Congress's view, these disregards had not helped AFDC recipients attain self-sufficiency through employment. See S. Rep. 97-139, 97th Cong., 1st Sess. 502 (1981). Under OBRA, the "$30 plus one-third" disregard was restricted to the first four months in which an AFDC recipient was employed. 42 U.S.C. 602(a)(8)(A)(iv) and (B)(ii). Congress also limited to

$75 the (previously open-ended) deduction for work expenses and altered the sequence of the $30 plus one-third disregard. See 42 U.S.C. 602(a)(8)(A)(ii); H.R. Rep. 97-208, 97th Cong., 1st Sess. 978-979 (1981). Congress coupled these changes with "provisions * * * aimed at providing employment for AFDC recipients" (S. Rep. 97-139, *supra,* at 502-503).

2. Petitioners lost their AFDC benefits as a result of the OBRA changes. Under OBRA, the State of Maine disregarded less of petitioners' income than before, with the result that petitioners' adjusted, or "countable," income exceeded the ceiling for receipt of AFDC benefits. In addition, the gross income of some petitioners was more than 150% of the state standard of need (the threshold cut-off for AFDC eligibility under OBRA). See Pet. App. C14, C16. In light of their loss of AFDC benefits, petitioners contended that they were entitled to four additional months of Medicaid coverage pursuant to 42 U.S.C. 1396a(e)(1). Under that provision, a family's Medicaid coverage continues for four months if loss of AFDC eligibility results from "increased hours of, or increased income from, employment."[1]

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[1]42 U.S.C. 1396a(e)(1) provides in pertinent part:

> Notwithstanding any other provision of this subchapter, effective January 1, 1974, each State plan approved under this subchapter must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of subchapter IV of this chapter in at least 3 of the 6 months immediately preceding the month in which such family became ineligible for such aid because of increased hours of, or increased income from, employment, shall, while a member of such family is employed, remain eligible for [Medicaid] assistance * * * for 4 calendar months beginning with the month in which such family became ineligible for aid under the plan approved under part A of subchapter IV of this chapter because of income and resources or hours of work limitations contained in such plan.

Following a hearing, the Maine Department of Human Services determined that petitioners were not eligible to receive an additional four months of Medicaid coverage. The Department ruled that petitioners had lost their AFDC eligibility not as a result of an increase in income from employment, as required under Section 1396a(e)(1), but rather because the statutory criteria for AFDC eligibility had changed. Pet. App. A3-A4, B4.

3. Petitioners brought this action against the Commissioner of the Maine Department of Human Services in the Maine Superior Court, Kennebec County. The Superior Court certified a class of all families in Maine who had lost or would lose their AFDC grants because their "countable income from employment" increased by operation of OBRA and who otherwise met the requirements of Section 1396a(e)(1) for four additional months of Medicaid coverage (Pet. App. B1-B2, C5-C6). The Superior Court affirmed the decision of the Department of Human Services on the ground that the plain language of Section 1396a(e)(1) did not support petitioners' claim to additional Medicaid coverage (Pet. App. B1-B7).

4. The Supreme Judicial Court of Maine affirmed (Pet. App. A1-A11). That court reasoned that (*id.* at A11)

> [petitioners'] loss of eligibility for AFDC payments did not result from any real increase in income, but from a reformulation under OBRA of the eligibility standard. Section 1396a(e)(1), while ameliorative, was never meant to redress all instances where AFDC benefits are cut off. We would have to disregard the statutory language to hold that an administrative change in eligibility criteria is equivalent to an increase in income from employment.

DISCUSSION

Petitioners contend that under 42 U.S.C. 1396a(e)(1) they were entitled to an additional four months of Medicaid coverage after their AFDC benefits ceased as a result of changes in the AFDC eligibility criteria made by the Omnibus Budget Reconciliation Act of 1981. Congress has already provided the relief sought by some class members; as to them, the case is therefore moot. The contentions of the remaining class members are without merit. The courts below correctly held that Section 1396a(e)(1) does not confer any statutory entitlement to the additional Medicaid coverage petitioners seek. Further review of petitioners' claim is not warranted.

1. One of the changes made by OBRA was the imposition of a four-month limitation on disregard of the first $30 of a family's earned income plus one-third of the remainder.[2] In July 1984, Congress acted to mitigate the effect of this change. Section 2624 of the Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 1134, provides a "work transition allowance" for families that otherwise would lose both AFDC benefits and the right to Medicaid coverage as a result of statutory changes in the $30 plus one-third disregard. Section 2624 requires that a state provide Medicaid coverage for a period of nine months after the termination of AFDC benefits whenever such termination results from application of a statutory limitation on the $30 plus one-third disregard, including the OBRA four-month limit on

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[2]The two named petitioners contend that they lost their AFDC benefits as a result of the OBRA provision that denies AFDC eligibility to families whose total income exceeds 150% of the state standard of need. See Pet. App. C14, C16. However, the two other reported decisions that have addressed the issue raised in this case have involved individuals who lost AFDC benefits because of the four-month limitation on the $30 plus one-third disregard. See *Phillips* v. *Noot*, 728 F.2d 1175 (8th Cir. 1984); *Edwards* v. *Myers*, 161 Cal. App.3d 129, 207 Cal. Rptr. 336 (1984).

that disregard; in addition, the state may choose to extend Medicaid coverage for an additional six months in such circumstances. This new provision applies to all families that "ceased to receive aid under the applicable State plan * * * before October 1, 1984, as well as with respect to families which cease to receive aid * * * on or after that date." 98 Stat. 1135. The conference committee report that accompanied the Deficit Reduction Act emphasizes that "[f]amilies eligible for the allowance include those who lose eligibility for regular AFDC benefits in the months following enactment, as well as those who have previously been terminated from the AFDC rolls because of the loss of the $30 plus one-third disregard." H.R. Rep. 98-861, 98th Cong., 2d Sess. 1394 (1984).

Under this new legislation all members of the petitioning class who lost their AFDC eligibility because of the OBRA four-month limit on the $30 plus one-third disregard are eligible to receive Medicaid coverage for an additional period of at least nine months, so long as they meet certain statutory requirements.[3] Since the new statute gives these

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[3]Section 2624 of the Deficit Reduction Act provides that a family that lost AFDC eligibility prior to October 1, 1984, on account of the four-month limit on the $30 plus one-third disregard must apply for the additional nine months of Medicaid coverage by the end of the sixth month after the month in which the Secretary of Health and Human Services promulgates regulations governing application of Section 2624; must be a family that otherwise would have been continuously eligible to receive AFDC benefits under the state plan from the time it ceased to receive such benefits if the $30 plus one-third disregard in fact had been applied; and must disclose any health insurance coverage its members may have in effect. 98 Stat. 1135. The Secretary promulgated interim final regulations governing application of Section 2624 on September 10, 1984. 49 Fed. Reg. 35586, 35601-35602. The introduction to the regulations states that in implementing Section 2624, "States should make all reasonable efforts to notify former recipients who may be eligible under this provision through contacts with local media, posters in public areas or other appropriate means." 49 Fed. Reg. 35595

individuals more Medicaid coverage than the four months they seek here, the case is moot as to them.[4]

2. Some members of the petitioning class lost AFDC eligibility as a result of OBRA changes other than the four-month limit on the $30 plus one-third disregard, *e.g.*, the limitation of the work expense disregard to $75 or the threshold requirement that gross income not exceed 150% of the state standard of need. The Deficit Reduction Act of 1984 does not provide additional Medicaid coverage for

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(1984). Under the regulations, the additional Medicaid coverage for families that ceased to receive AFDC benefits prior to October 1, 1984, begins with the month the family applies for Medicaid and meets the statutory conditions. *Id.* at 35601-35602.

We advised petitioners' counsel in December 1984 of the existence of Section 2624 of the Deficit Reduction Act.

[4]It appears from the complaint (Pet. App. C23) that petitioners do not seek Medicaid coverage for the four-month period immediately following loss of their AFDC benefits; rather, they seek four months of Medicaid coverage on a current basis, which is the relief afforded by the Deficit Reduction Act.

Members of the petitioning class who lost AFDC benefits as a result of the four-month limit on the $30 plus one-third disregard might take the position that they are entitled to four months of Medicaid coverage in addition to the extra Medicaid coverage provided under Section 2624 of the Deficit Reduction Act. That position could not withstand scrutiny. Congress enacted Section 2624 in the belief that those in petitioners' position were not entitled to receive four months of Medicaid coverage pursuant to 42 U.S.C. 1396a(e)(1). See page 5, *infra*. Thus, Congress could not have meant for an individual to benefit from both provisions.

In his brief in opposition (at 7) respondent suggests that some class members may have continued to enjoy Medicaid coverage after their AFDC benefits were terminated if they qualified as "medically needy" under the State of Maine's Medicaid plan. See 42 U.S.C. 1396a(a)(10)(A)(ii), 1396d(a). Medicaid coverage available to the medically needy generally is less extensive than that available to those receiving AFDC benefits. However, if some class members did receive Medicaid coverage equivalent to what they would have enjoyed if they had continued to be AFDC recipients, the case also would be moot as to them.

these petitioners, so the case is not moot as to them.[5] However, it is clear that the courts below interpreted Section 1396a(e)(1) correctly and that petitioners are not entitled to the relief they seek under that provision.

Section 1396a(e)(1) states that an additional four months of Medicaid coverage is available to those who lose AFDC eligibility because of "increased hours of, or increased income from, employment." Petitioners admittedly did not have increased hours of employment. Nor did they have "increased income from * * * employment." As the courts below recognized (Pet. App. A9-A10, B5), the plain meaning of that language is additional wages received in compensation for employment. Accord, *Edwards* v. *Myers,* 161 Cal. App.3d 129, 207 Cal. Rptr. 336, 339 (1984). Petitioners acknowledge that "[t]heir gross earnings from employment did not change" (Pet. 6); rather, they lost AFDC benefits as a result of changes in the statutory eligibility criteria. Thus, petitioners do not come within the language of Section 1396a(e)(1).

Petitioners contend (Pet. 3-4) that the phrase "increased income from * * * employment" refers not to increases in wages, but to increases in "countable income," *i.e.,* that income used to determine AFDC eligibility, or income remaining after all applicable deductions and disregards have been taken. But that is not the natural reading of the statute. And nothing in the legislative history of Section 1396a(e)(1) suggests that Congress was referring to loss of AFDC eligibility for a reason other than an increase in

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[5]Even as to a portion of these petitioners, the case may well be moot. The Deficit Reduction Act liberalizes somewhat the criteria for AFDC eligibility. For example, Section 2621 of the Deficit Reduction Act, 98 Stat. 1134, raises the gross income limit from 150% to 185% of the state standard of need. Any petitioners who are now receiving AFDC benefits as a result of these liberalizing changes are automatically eligible for Medicaid coverage.

wages. The portion of the Senate report that referred to that provision makes clear that Congress was concerned with situations in which AFDC recipients had the opportunity to earn higher wages:

> [A] person might not want to seek greater earnings since additional earnings could make him ineligible for medicaid, with the result that he would lose medical benefits worth many times more than the dollar of marginal income which moved him off the cash assistance rolls. This so called "medicaid notch" is both inequitable and a disincentive to work.

S. Rep. 92-1230, 92d Cong., 2d Sess. 220 (1972). See also *id.* at 221 (referring to loss of AFDC eligibility because of "changes in earnings").

Congress confirmed this understanding of Section 1396a(e)(1) when it enacted the Deficit Reduction Act of 1984. In describing the need for Section 2624 (the "work transition allowance" provision), the House committee explained that families that lost AFDC eligibility as a result of the OBRA four-month limit on the $30 plus one-third disregard were not eligible for an additional four months of Medicaid coverage pursuant to Section 1396a(e)(1):

> The Omnibus Budget Reconciliation Act of 1981 significantly changed the method for calculating countable income in the AFDC program. As a result of these changes, many working AFDC families lose AFDC eligibility and the Medicaid coverage that is automatically extended to AFDC recipients when the 4-month limit on the work incentive is imposed. If these families became ineligible due to increased earnings, they would receive an additional four months of Medicaid. However, since their ineligibility is the result of fewer deductions (and not increased earnings), they are not assured of continued health coverage, unless the State

had chosen to offer supplemental health benefits (known as a medically needy program).

H.R. Rep. 98-664, 98th Cong., 2d Sess. 14 (1984). Similarly, the conference committee observed that under Section 1396a(e)(1) "[c]ategorical medicaid eligibility is retained after the loss of AFDC eligibility only in the case of families whose earnings increase to the point that they would be ineligible even if the $30 plus one-third disregard were applied." H.R. Rep. 98-861, *supra,* at 1393. Thus, it is clear that Congress understood Section 1396a(e)(1) to apply only to AFDC recipients who lost benefits because their actual wages increased, not to those like petitioners, whose "countable income" increased as a result of changes in the statutory eligibility criteria.[6] This congressional understanding is entitled to substantial weight. See, *e.g., Bell* v. *New Jersey,* 461 U.S. 773, 784 (1983).

3. Petitioners contend (Pet. 10-13) that review is warranted because the decision below conflicts with *Phillips* v. *Noot,* 728 F.2d 1175 (8th Cir. 1984). The plaintiffs in *Phillips* had lost AFDC eligibility as a result of OBRA's four-month limit on the $30 plus one-third disregard. The Eighth Circuit held that the plaintiffs were entitled to an additional four months of Medicaid coverage under Section 1396a(e)(1) because, in the court's view, the phrase "income from * * * employment" used in that section refers to "countable income," not to wages.

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[6]Congress also made clear in Section 2625(a) of the Deficit Reduction Act, 98 Stat. 1135 (entitled "Clarification of Earned Income Provision"), that the term "earned income," as used in the AFDC statute, refers to gross earned income, not to income after deductions and disregards. Cf. *Heckler* v. *Turner,* No. 83-1097 (Aug. 10, 1984) (Rehnquist, Circuit Justice). That provision strongly suggests that the term "income from * * * employment," used in Section 1396a(e)(1) in reference to the AFDC program, signifies gross income from wages, not gross income less applicable deductions and disregards.

For the reasons discussed above, we believe the Eighth Circuit's holding in *Phillips* is inconsistent with both the language and legislative history of Section 1396a(e)(1).[7] However, *Phillips* was decided before the passage of the Deficit Reduction Act. The Eighth Circuit might well decide that case differently now in light of the legislative history that accompanied the new statute (see pages 9-10, *supra*). Moreover, as respondent points out (Br. in Opp. 3, 6), the issue in this case and in *Phillips* relates to a one-time loss of Medicaid coverage as a result of an event (the passage of OBRA) that occurred more than three years ago; thus, the issue cannot be regarded as one of continuing importance. Finally, Congress provided relief in the Deficit Reduction Act for individuals in the situation of the plaintiffs in *Phillips, i.e.*, those who lost AFDC benefits because of the four-month limit on the $30 plus one-third disregard. See pages 5-6, *supra*. For these reasons, the conflict between Phillips and the decision below does not warrant review by this Court.[8]

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[7]The court in *Phillips* believed that its reading of Section 1396a(e)(1) was consistent with the legislative purposes underlying that provision because a refusal to extend additional Medicaid coverage to individuals who had lost their AFDC benefits as a result of the OBRA four-month limitation on the $30 plus one-third disregard might discourage AFDC recipients from continuing to work and result in a sudden loss of medical care. See 728 F.2d at 1177-1178. We doubt that individuals would stop working merely as a result of the OBRA changes; indeed, the plaintiffs in *Phillips* had continued to work. In any event, the considerations cited by the court in *Phillips* are insufficient to overcome the clear indications in the language and legislative history of Section 1396a(e)(1) that Congress wished to provide additional Medicaid coverage only to those individuals who had lost AFDC benefits as a result of increases in their hours of employment or wages.

[8]This Court is now considering *Heckler* v. *Turner*, No. 83-1097 (argued Oct. 9, 1984), which involves deduction from "income" of the $75 work expense disregard under the AFDC statute, 42 U.S.C. 602(a)(7). In deciding *Turner*, the Court may have occasion to comment on the meaning of the term "income" as it is used in the AFDC statute,

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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which in turn might be of some relevance to the issue raised in this case (see note 6, *supra*). However, the issues in the two cases are only tangentially related, and there are independent reasons why review is not warranted in this case. Thus, there is no need to hold this case pending a decision in *Turner*.

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